

## **Original view**

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# YOUR RIGHTS AS A FEDERAL EMPLOYEE ENFORCED BY THE U.S. OFFICE OF SPECIAL COUNSEL

I. The U.S. Office of Special Counsel (OSC) is an independent agency that investigates and prosecutes allegations of prohibited personnel practices.

## **WHAT IS A PROHIBITED PERSONNEL PRACTICE (PPP)?**

Under 5 U.S.C. §§ 2302(b)(1)-(b)(14) a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

- **Discriminate (including discrimination based on marital status and political affiliation).** *EXAMPLE: Supervisor Joe refuses to promote Employee Jane because Jane is a registered Republican; or his refusal is because she is a single mother. (OSC will generally defer Title VII discrimination allegations to the EEO process, rather than duplicating already existing procedures.)*
- **Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.** *EXAMPLE: Selecting Official Joe hires Applicant Jack based on Senator Smith's recommendation that Jack be hired because Jack is a constituent; or fails to hire Applicant Jane because of Congressman Smith's recommendation based on the Congressman's friendship with Jane's parents.*
- **Coerce the political activity of any person, or take action against any employee as reprisal for refusing to engage in political activity.** *EXAMPLE: Supervisor Jane takes away significant job duties of Employee Jack because Jack will not make a contribution to Jane's favorite candidate.*
- **Deceive or willfully obstruct any person from competing for employment.** *EXAMPLE: Supervisor Joe, located in Headquarters, orders that no vacancy announcements be posted in the field office where Employee Jack works because he does not want Jack to get a new job; or falsely states that there will be extensive travel in the position when he knows that there is no travel.*
- **Engage in nepotism.** *EXAMPLE: Second-level Supervisor Jane asks First-level Supervisor Joe to hire her son; or to promote her daughter.*
- **Take a personnel action against an employee because of whistleblowing.** *EXAMPLE: Supervisor Joe directs the geographic reassignment of Employee Jack because Jack reported safety violations to the agency's Inspector General; or because employee Jill reported a gross waste of funds to the Office of Internal Affairs.*
- **Take a personnel action against any employee because of the exercise of an appeal, complaint, or grievance right.** *EXAMPLE: Supervisor Jane places Employee Jack on an undesirable detail because Employee Jack filed an administrative grievance about his performance rating.*
- **Discriminate against an employee on the basis of conduct, which does not adversely affect the performance of the employee, including discrimination based on sexual orientation.** *EXAMPLE: Jack's employment is terminated because he attended a "Gay Pride" march; or he attended a "Pro-Life" event; or he attended an animal rights rally; or he attended a gun-owners' rights meeting.*
- **Take or fail to take a personnel action, if such action would violate a veterans' preference requirement.** *Example: Supervisor Jane hired Employee Jack, without considering Veteran Jennifer, who was included on the list of eligible employees. (OSC's jurisdiction is for disciplinary actions only; the Dept. of Labor has jurisdiction to investigate for corrective actions.).*
- **Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.** *EXAMPLE: Supervisor Jane, in an effort to hire Employee Joe, tells Employee Jack that he should not apply for a position because he is not qualified and will never be selected. Employee Jack is qualified.*

- Give an unauthorized preference to a person to improve or injure the employment prospects of any particular employee or applicant.  
*EXAMPLE: Supervisor Jane specifies that Spanish-speaking skills are necessary for a vacant position, for the purpose of selecting Employee Jack, who speaks fluent Spanish. The position, however, does not require Spanish-speaking skills.*
- Take a personnel action against an employee which violates a law, rule, or regulation which implements a merit systems principle. *EXAMPLE: Supervisor Joe terminates the probationary appointment of Employee Jack because of Jack's letter to the editor criticizing affirmative action - a valid exercise of First amendment rights, a law implementing a merit system principle.*
- Implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights. *EXAMPLE: A manager requires all employees in his program to sign a non-disclosure agreement that prohibits the employees from discussing the program in any way and fails to notify employees of protected channels for making disclosures.*
- Access the medical record of an employee or applicant, as part of, or in furtherance of any of the above-listed prohibitions. *EXAMPLE: An employee expresses interest in an open position to the hiring official, who wants to hire another applicant. The hiring official accesses the employee's medical record and attempts to influence the employee to withdraw from competition by telling her that the stress of the new position will worsen a condition found in her medical record.*

### What can you do if you believe a PPP has been committed?

Current and former federal employees, including probationary employees, and applicants for federal employment can file a written complaint with the U.S. Office of Special Counsel. Complaint forms are available on the Web at [www.osc.gov](http://www.osc.gov). Employees do not need attorneys to file a complaint. OSC is an independent and prosecutorial agency. It will investigate allegations of prohibited personnel practices and seek the appropriate corrective and/or disciplinary action.

## II. OSC also receives confidential disclosures and enforces the Hatch Act.

### **RECEIVING CONFIDENTIAL DISCLOSURES (5 U.S.C. § 1213):**

Current and former federal employees and applicants can confidentially report information evidencing a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. OSC has the authority to require the head of the agency concerned to investigate the matter if OSC determines that a disclosure has been made.

### **ENFORCING THE HATCH ACT (5 U.S.C. §§ 7321-26):**

OSC is authorized to issue advisory opinions that respond to federal employee questions about whether or not they may engage in specific political activities under the Act. OSC also prosecutes violations of the Hatch Act before the Merit Systems Protection Board. These violations include: using official authority to interfere with an election result; soliciting, accepting or receiving political contributions; soliciting or discouraging political activity of persons before the employing agency; and running for public office in a partisan political election.

### Need additional information?

- Information on filing a complaint or making a disclosure: 202-804-7000, 800-872-9855, or [info@osc.gov](mailto:info@osc.gov).
- Updated and detailed information on OSC and its procedures: [www.osc.gov](http://www.osc.gov).
- Information about training and certification: 202-804-7163 or [certification@osc.gov](mailto:cetification@osc.gov).

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